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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM BASKERVILLE,

Defendant and Appellant.

B209900

(Los Angeles County  
Super. Ct. Nos. LA055289, LA055311)

APPEAL from an order of the Superior Court of Los Angeles County, Kathryn  
A. Stoltz. Affirmed in part and reversed in part with directions.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant  
Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and  
Shawn McGahey Webb and David E. Madeo, Deputy Attorneys General, for Plaintiff  
and Respondent.

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Defendant William Baskerville appeals from the judgment entered following a jury trial in which he was convicted of seven counts: theft of personal identifying information from 10 or more persons, counterfeiting the California state seal, two counts of receiving stolen property, possession of a deadly weapon, possession of cocaine for sale, and possession of methamphetamine for sale. He challenges only his conviction for violating Penal Code section 472 by counterfeiting the California state seal, contending that the prosecution failed to offer sufficient evidence to prove two of the statutory elements: intent to defraud and willfully concealing the counterfeit nature of the state seal. Although substantial evidence demonstrated Baskerville's intent to defraud, the evidence was insufficient to prove that he either willfully concealed the counterfeit nature of the seal or attempted to do so. We reverse his conviction for violating Penal Code section 472.

### **BACKGROUND**

William Baskerville was charged with multiple thefts of personal identifying information, possession of counterfeiting equipment, forgery of a counterfeit note, possession of a counterfeit California seal, two counts of receiving stolen property, and possession of a deadly weapon. It was further alleged that Baskerville was on bail at the time and that he had two prior convictions, making him ineligible for probation. (Super. Ct. L.A. County, No. LA055289.) A separate information charged Baskerville and Victoria Gregoriou as codefendants with possession for sale of cocaine and methamphetamine. (Super. Ct. L.A. County, No. LA055311.) The initial information was subsequently amended by interlineation to add the narcotics charges, and all charges against Baskerville were consolidated into case No. LA055289.

On March 5, 2007, Los Angeles Police Department officers Joseph Hampton and Mike Mireles were patrolling the area in and around 19335 Ventura Boulevard, the location of the Movieland Motel. In the motel's parking lot, they saw a gray BMW with paper dealer plates affixed to the front and rear.

During their investigation, a tow truck entered the motel parking lot to repossess the BMW. The motel manager approached the officers and told them that following

Baskerville's prior stay at the motel, she found a plastic bag containing 20 to 30 tiny, empty baggies. She told the officers she suspected that Baskerville was selling drugs from the room.

While the officers approached the motel room, a man came out and identified himself as William Baskerville. He asked, "Is this about the car?" and the officers explained that they were conducting an investigation unrelated to the car. Baskerville consented to a search of his room.

A female occupant of the room identified herself as Victoria Gregoriou, who was the subject of an outstanding warrant. The officers searched the room and noticed a military-style ammunition container on the closet floor. On top of the container was a clear plastic bag with smaller bags inside the larger one. Officers recovered three small baggies containing a crystal substance that was consistent with methamphetamine and a plastic bag with a white powdery substance that was consistent with cocaine. The parties eventually stipulated that the substances were in fact cocaine and methamphetamine. Gregoriou later pleaded guilty to possession of the drugs found in the motel room.

Baskerville also gave the officers consent to search his BMW. While other officers were searching the motel room, Officer Hampton searched the car and discovered two metal throwing stars, a notebook consistent with a "pay-and-owe" list, a counterfeit \$50 bill, and the names and various "account numbers" of four different people.

After searching the vehicle, Officer Hampton went upstairs to help the other officers continue searching the motel room. Underneath the bed, they discovered a pillowcase containing a Best Buy billing statement and several pieces of mail addressed to different people. Two computers were also recovered, one of which was hooked up to a color printer with copying and scanning functions.

Hampton searched Baskerville's computer and found images of California Department of Motor Vehicles (DMV) seals; seals and security information for various credit cards; scanned United States currency; images of at least 38 state seals; exemplars of driver's licenses from numerous American states and Canada, including some reversed

images; an image of Charles Hartt's California driver's license; exemplars of several major credit cards; a sample diploma for "John Q. Public" from North Atlantic University; payroll information for a number of people; and a 213-page document listing more than 100 names and setting forth various identifying and personal information including addresses, driver's license numbers, dates of birth, credit card numbers, social security numbers, mother's maiden names, e-mail addresses, pin numbers, and the three-digit security code normally located on the back of credit cards. Hampton testified that the sample driver's licenses and diplomas were obviously samples, using identifying information such as "Sample Driver" and "John Q. Public." He further testified that the state seal images did not appear to have been manipulated or modified, and they did not "appear to be in the process of being affixed to any other documents."

Hampton also found "how-to" documents on the computer, including information on encoding systems, plastic card embossing, credit card security features, characteristics of how security patterns are illuminated by certain types of light, and a document entitled "credit card fraud via e-commerce and a cc number generator."

Bill Fulton, a DMV investigator and police officer, testified as an expert witness for the prosecution. Fulton explained how a counterfeit driver's license could be produced using Adobe Photoshop. In response to a hypothetical question, Fulton opined that a person who possessed all of the evidence admitted during the trial would be manufacturing government documents and driver's licenses.

The jury was instructed with CALCRIM No. 1926, which provides in pertinent part: "To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant possessed a counterfeit seal or an impression of a counterfeit seal of this state; [¶] 2. The defendant knew that the seal or impression of the seal was counterfeit; [¶] 3. The defendant willfully concealed the fact that the seal or impression of the seal was counterfeit; AND [¶] 4. When the defendant possessed the seal or impression of the seal, he intended to defraud."

The jury found Baskerville guilty of all charges, except possession of counterfeiting equipment and forgery of a counterfeit note, for which he was found not

guilty. The trial court sentenced Baskerville to 5 years 8 months in state prison, consisting of four years for the cocaine possession with intent to sell, eight months for identity theft, and one year for the prior prison term. Baskerville also received two-year sentences on each of the five remaining counts to run concurrently with the four-year sentence imposed for the cocaine possession. The court further imposed and stayed a two-year sentence on one of the receiving stolen property counts. Baskerville now appeals.

## **DISCUSSION**

Baskerville challenges the sufficiency of the evidence supporting the jury verdict finding him guilty of possessing a counterfeit State of California seal under Penal Code section 472. He contends the evidence was insufficient with respect to two elements: intent to defraud and willful concealment of the counterfeit nature of the state seal. We disagree with the first contention and agree with the second.

### **I. Standard of Review**

In reviewing a sufficiency of the evidence challenge, “the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence — that is, evidence which is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496.) “[I]f the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.” (*People v. Bean* (1988) 46 Cal.3d 919, 933, quoting *People v. Hillery* (1965) 62 Cal.2d 692, 702.) This standard of review also applies when the prosecution relies on primarily circumstantial evidence. (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.)

### **II. Forgery of Public Seals**

Penal Code section 472 prohibits the forgery, counterfeiting, possession, and concealment of counterfeited seals. It provides in pertinent part, “Every person who, with intent to defraud another, forges, or counterfeits the seal of this State . . . or any

other public seal authorized or recognized by the laws of this State . . . or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.”

We focus on the intent to defraud and willful concealment elements challenged by Baskerville on appeal.

#### **A. Intent to Defraud**

A Penal Code section 472 conviction requires “intent to defraud another.” Specific intent as an element of a crime may be proved by circumstantial evidence. (*People v. Wilkins* (1972) 27 Cal.App.3d 763, 773) [possession of blank sheets of selective service cards and instructions for making California driver’s licenses supported an inference that the defendant possessed the requisite intent to defraud].) “Making virtually any kind of false document affords an inference that the maker intends to deceive someone.” (*Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 388.)

Baskerville contends that the California seal was “simply a downloaded graphic” with “nothing false or deceptive about it.” He argues that “there were no counterfeit licenses, and no evidence that [he] had altered the state seal graphic in any way, or combined it with any of the other downloaded images, or taken any other even preliminary step toward actually creating a counterfeit license.” He concedes that the jury “may have surmised that [he] intended to produce fake driver’s licenses,” but he maintains that “there was not substantial evidence to support a finding beyond a reasonable doubt that [he] . . . possessed the seal with the intent to defraud.”

Substantial circumstantial evidence, in addition to Fulton’s opinion, established Baskerville’s intent to defraud. He possessed a computer onto which he had downloaded or otherwise placed images of the California state seal and the seals of many other states, numerous images of United States and Canadian driver’s licenses, images of DMV logos and seals, an image of a sample college diploma, and lists of identifying information and payroll data for numerous persons. He also possessed “how-to” literature on counterfeiting and credit card fraud and had a multi-function color printer attached to the

computer. His possession of a combination of personal identifying information for which he had no apparent legitimate purpose, images and templates that could be used in creating false government identification cards, a computer on which such false cards could at least potentially be created, and a color printer that could be used to print such cards amply demonstrated an intent to create false government identification cards, which in turn amply supported the element of intent to defraud. (*People v. Castellanos* (2003) 110 Cal.App.4th 1489, 1493–1494 (*Castellanos*) [possession of forged resident alien card sufficient to demonstrate intent to defraud for purposes of Penal Code section 472].)

### **B. Willful Concealment**

A conviction under Penal Code section 472 also requires the defendant to have knowledge of the seal's counterfeit nature and to "willfully conceal the same." Baskerville argues that "[t]here was not substantial evidence that [he] 'willfully concealed the fact that the seal or impression of the seal was counterfeit.'" He maintains that "[t]he evidence was simply that [he] had saved state seal graphics and sample drivers license images containing the state seal on his computer," and concludes that "there was absolutely no evidence that [he] had taken any measures to conceal the non-genuine nature of the graphic."

The Attorney General responds by arguing that "evidence proving [Baskerville's] intent to defraud will also prove that he concealed the phony nature of the seal." We disagree. This argument falls short because Baskerville did not make any use of the seal image, let alone any use in which he concealed its counterfeit nature. Baskerville simply possessed the digital images of the seals on his computer and did not, for example, create a fake government identification card. (Cf. *Castellanos, supra*, 110 Cal.App.4th 1489 [possession of counterfeit resident alien card].) The seal was nothing more than an image stored on his computer, and nothing in the record supports a finding that he willfully concealed its counterfeit nature. His conviction for violating Penal Code section 472 must be reversed.

### III. Attempt

We asked the parties to file supplemental briefs addressing whether the evidence was sufficient to support a conviction for an attempted violation of Penal Code section 472. Baskerville contends the evidence does not support an attempt, while respondent argues it does. Baskerville is correct.

The crime of attempt “consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (Pen. Code, § 21a.) A defendant need not commit an element of the underlying offense. (*People v. Medina* (2007) 41 Cal.4th 685, 694.) The act must be more than mere preparation, and it must show that the perpetrator is putting the plan into action. (*People v. Bonner* (2000) 80 Cal.App.4th 759, 764.) But the act need not be the last proximate or ultimate step toward commission of the crime. (*Ibid.*) “Whether acts done in contemplation of the commission of a crime are merely preparatory or whether they are instead sufficiently close to the consummation of the crime is a question of degree and depends upon the facts and circumstances of a particular case.” (*People v. Superior Court (Decker)* (2007) 41 Cal.4th 1, 14.) “[T]here is a material difference between the preparation antecedent to an offense and the actual attempt to commit it. The preparation consists of devising or arranging the means or measures necessary for the commission of the offense, while the attempt is the direct movement toward its commission after the preparations are made. In other words, to constitute an attempt the acts of the defendant must go so far that they would result in the accomplishment of the crime unless frustrated by extraneous circumstances. [Citations.]’ [Citations.]” (*People v. Memro* (1985) 38 Cal.3d 658, 698, overruled on another point in *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2.)

The record here shows only preparation. Baskerville acquired digital images of sample driver’s licenses and the state seal. He had a computer with a color printer and some information that might have been helpful to him in producing fake government identification cards. But he did not have Adobe Photoshop or other software that would allow him to combine the seals with photographs and text to create a fake identification card or to use the seal on any other document. Nor was there any evidence that the police



found the physical materials that would be necessary to print an identification card, such as plastic cards or laminating material. In sum, there is no evidence that Baskerville ever committed any act that went beyond preparation and put his apparent plan to make fake government identification cards (or otherwise fraudulently use the state seal) into action. “[T]he line between preparation and an attempt is often indistinct. However, we conclude that this line has not been crossed where the prosecution’s evidence shows that a defendant is still engaged in preparatory acts and that there is a complete inability to take even initial steps toward producing the finished product. After all, ““planning the offense”” and ““devising, obtaining or arranging the means for its commission”” are merely aspects of preparation.” (*People v. Luna* (2009) 170 Cal.App.4th 535, 543 [evidence insufficient to support conviction of attempting to manufacture hashish where defendant had knowledge, equipment, and cash, but no marijuana].)

The evidence does not support modifying Baskerville’s conviction to an attempted violation of Penal Code section 472.

### **DISPOSITION**

The judgment is reversed as to the Penal Code section 472 conviction (count 4). In all other respects, the judgment is affirmed. The trial court is directed to amend the abstract of judgment accordingly and to forward the amended abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

MILLER, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.